

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Criminal Revision No.1367 of 2016 (O&M).
Decided on:-May 30, 2016.

Ishwar Singh.

.....Petitioner.

Versus

State of Haryana.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

1. Whether reporters of local newspapers may be allowed to see judgment? Yes
2. To be referred to reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present:- Mr. Arvind Bansal, Advocate
for the petitioner.

Mr. Manish Bansal, DAG, Haryana
for the respondent-State.

HARI PAL VERMA, J.

By way of the present petition, petitioner Ishwar Singh has challenged the judgment dated 2.2.2016 passed by learned Sessions Judge, Kaithal, vide which the criminal appeal preferred by him against the judgment of conviction dated 14.10.2014 and order of sentence dated 16.10.2014 passed by learned Additional Chief Judicial Magistrate, Kaithal, was dismissed.

Learned Magistrate vide judgment dated 14.10.2014 convicted the petitioner for offence punishable under Sections 279 and 304-A IPC and

vide separate order dated 16.10.2014, sentenced him as under:

<u>Under Section</u>	<u>Sentence</u>
279 IPC	Rigorous imprisonment for three months with fine of Rs.500/- and in default thereof, to further undergo simple imprisonment for one month.
304-A IPC	Rigorous imprisonment for one year with fine of Rs.1,000/- and in default thereof, to further undergo simple imprisonment for two months.

However, both the substantive sentences were ordered to run concurrently.

Briefly stated, prosecution version is that on 23.7.2011, a telephonic message was received at Police Station, Pundri from Police Post, General Hospital, Karnal that Prince son of Salinder, resident of village Sanch had died on account of injuries sustained by him in a roadside accident. On receipt of said information, ASI Jaibir Singh along with other police officials reached General Hospital, Kaithal next morning. He collected the Ruqqa from concerned Police Post and met Salinder son of Prem Singh, resident of village Sanch in front of the dead house. Said Salinder got his statement recorded to the effect that he is an agriculturist and had two daughters and a son, namely, Prince Kumar, aged about 6 years. For the past 2-3 days, Prince was suffering from fever. On 23.7.2011 at about 5.15 PM, he and his cousin Balbir Singh were taking Prince to village

Rasina on motorcycle No.HR-05M-9194, Make Hero Honda Splendor, for providing him medicine from the doctor. The motorcycle was being driven by his cousin Balbir Singh whereas he and Prince were the pillion riders. At about 5.30 PM, when they reached on the turning of village Rasina on Sanch road, a truck being driven by its driver in a rash and negligent manner and at a fast speed, came from Karnal side and that too without blowing any horn. The truck straightway struck against their motorcycle. The truck driver stopped at some distance for a while and then, sped away from the spot. Balbir Singh noticed the registration number of truck as HR-22GA-0411.

Due to the said accident, their motorcycle fell down. His cousin Balbir Singh fell down on Kucha portion of the road, whereas he and Prince fell down on the metalled road. Prince sustained multiple and serious injuries on his person. He and Balbir Singh arranged a vehicle and took Prince to General Hospital, Karnal. During treatment at about 9.00 PM, Prince succumbed to injuries. He further alleged that he could identify the driver of truck, if brought before him.

On the basis of the statement of complainant Salinder, FIR No.187 dated 24.7.2011 under Sections 279 and 304-A IPC was registered against the petitioner-accused at Police Station, Pundri, District Kaithal. Statements of witnesses were recorded. Site plan was prepared and post-mortem of the dead body of Prince was got conducted. After completion of investigation, challan was presented in the Court. Copy of challan was

supplied to the petitioner-accused free of costs as envisaged under Section 207 Cr.PC. Thereafter, the accused was charge-sheeted by the trial Court for the commission of offence under Sections 279 and 304-A IPC to which he did not plead guilty and claimed trial.

In order to prove its case, the prosecution examined as many as 9 witnesses including eye witness Balbir Singh as PW2. Thereafter, the statement of accused under Section 313 Cr.PC was recorded wherein he denied the allegations levelled against him. However, no evidence in defence was led by the petitioner-accused.

Considering the evidence so adduced, the trial Court vide its judgment dated 14.10.2014 and order dated 16.10.2014 had convicted and sentenced the petitioner in the manner as mentioned above.

Feeling aggrieved, the petitioner preferred an appeal against the said judgment of conviction and order of sentence before the learned Sessions Judge, Kaithal. However, the appellate Court vide judgment dated 2.2.2016 dismissed his appeal.

It is in the aforesaid circumstances, the petitioner has filed the present revision petition.

In view of order dated April 07, 2016 passed by this Court, whereby notice of motion was issued only to the limited extent of quantum of sentence, learned counsel for the petitioner has confined his arguments qua the quantum of sentence only. He has contended that as against the

awarded sentence of one year, the petitioner is in custody since 2.2.2016 i.e. more than three and a half months. He has further contended that the FIR in question was registered on 24.7.2011 and since then, the petitioner is consistently facing mental agony about the pendency of the criminal proceedings against him. There is no other criminal case pending against him. He has further contended that the petitioner is a first time offender and the only bread-earner of his family. He is a poor person and has three children to support. He has further prayed that the sentence of the petitioner be reduced to the period already undergone by him.

Learned counsel for the petitioner has further submitted that the legal heirs of deceased Prince have already been awarded compensation by the Motor Accidents Claims Tribunal under the Motor Vehicles Act, 1988. In this regard, he has placed on record copy of award dated 18.12.2013 passed by learned Motor Accidents Claims Tribunal, Kaithal which shows that the legal heirs of deceased Prince have been awarded compensation of Rs.2,75,000/- along with interest @ 9% per annum from the date of filing of the petition till its realization. However, the insurance company has been ordered to make the payment as the vehicle in question was insured one.

On the other hand, learned State counsel has vehemently argued that the Court should not take liberal view in offence under Section 304-A IPC more particularly when both the Courts are against the petitioner.

I have heard learned counsel for the parties.

The Hon'ble Supreme Court in a recent judgment in ***State of M.P. Versus Mehtaab 2015(1) RCR (Criminal) 1008*** has held that when the accused was found guilty of causing death by negligence, the High Court was not justified in reducing sentence of imprisonment to the period of 10 days without awarding any compensation to the legal heirs of the deceased. As such, the Apex Court while modifying the order passed by the High Court had held that the order of the High Court can be upheld only with the modification that the accused will pay compensation to the heirs of the deceased. This judgment was also followed by this Court in ***Criminal Revision No.1761 of 2015 decided on December 07, 2015*** titled as ***Kashmir Singh Versus State of Punjab***.

Similarly, the Hon'ble Supreme Court in ***State of Himachal Pradesh Versus Ram Pal 2015(2) RCR (Criminal) 127*** has observed in para Nos.13 and 14 of the judgment as below:

“13. It is evident from the facts and circumstances of the case that the respondent has not called in question his conviction. We have before us only challenge to the inadequacy of the sentence in the present appeal filed by the State. Moreover, in an appeal under Article 136 of the Constitution, this Court does not re-appreciate the evidence, in absence of perversity or patent legal error, merely because a different view was also possible. We are thus, not inclined to reopen the correctness of conviction of the respondent and proceed to consider the question of adequacy of the sentence. In our view,

*the sentence of mere fine of Rs.40,000/- imposed by the High Court is not adequate and proportionate to the offence. We have been informed that a sum of Rs.3,60,000/- has been awarded as compensation by the insurance company to the heirs of the deceased. We are also of the view that where the accused is unable to pay adequate compensation to the victim or his heir, the Court ought to have awarded compensation under Section 357A against the State from the funds available under the Victim Compensation Scheme framed under the said section. This Court has dealt with the issue in **Suresh vs. State of Haryana, 2015 (1) RCR (Criminal) 148**, **Manohar Singh vs. State of Rajasthan & Ors. 2015 (1) RCR (Criminal) 747** and **State of M.P. vs. Mehtaab 2015 (1) RCR (Criminal) 1008**. Having regard to totality of circumstances of the present case, we feel that ends of justice will be served if the accused is required to pay total compensation of Rs.1 lakh and the State to pay a sum of Rs.3 lakhs.*

14. *Accordingly, we modify the impugned order passed by the High Court and enhance the compensation to be paid by the respondent accused to Rs.1 lakh to be paid within four months failing which the sentence awarded by the Court of Session shall stand revived. In addition, we direct the State of Himachal Pradesh to pay interim compensation of Rs.3 lakhs. In case the respondent fails to pay any part of the compensation, that part of compensation will also be paid by the State so that the heirs of the victim get total sum of Rs. 4 lakhs towards compensation. The amount already paid may be adjusted.”*

Considering the fact that the learned trial Court had convicted and sentenced the petitioner and the learned appellate Court had upheld the verdict of the trial Court, this Court, however, cannot ignore the fact that the petitioner-accused while driving the offending truck in a rash and negligent manner had caused the death of Prince.

However, considering the restricted arguments qua the quantum of sentence and coupled with the fact that the petitioner is suffering the agony of criminal proceedings since 24.7.2011 when the FIR in question was registered and further as against the total sentence of one year, he has suffered incarceration for a period of more than three and a half months and there is no other criminal case pending against the petitioner, this Court feels that the ends of justice would be met in case the conviction of the petitioner-accused is upheld but the sentence awarded to him is reduced to the period already undergone by him.

Accordingly, the conviction of the petitioner-accused is upheld but the sentence is reduced to the period already undergone by him. However, this Court, in the light of the judgments of Hon'ble Supreme Court in *Mehtaab's case (supra)* and *Ram Pal's case (supra)* directs the petitioner to pay compensation of Rs.40,000/- to the legal heirs of deceased Prince. It is made clear that this amount shall be over and above the amount of compensation awarded by the Motor Accidents Claims Tribunal, Kaithal.

The petitioner be released from custody forthwith, if not

required in any other case, subject to his depositing of Rs.40,000/- with the trial Court. The trial Court shall disburse the amount of compensation to the legal heirs of deceased Prince. It is made clear that in case the petitioner fails to deposit the amount of compensation with the trial Court, he shall be liable to undergo imprisonment as awarded by the trial Court and affirmed by the lower appellate Court.

With the aforesaid modification, the present revision petition stands dismissed.

May 30, 2016
Yag Dutt

(HARI PAL VERMA)
JUDGE